

Senate Bill No. 1831

Passed the Senate May 30, 2002

Secretary of the Senate

Passed the Assembly August 31, 2002

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2002, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to add Article 7 (commencing with Section 63049) to Chapter 2 of Division 1 of Title 6.7 of the Government Code, and to amend Section 104897 of the Health and Safety Code, relating to tobacco settlement moneys.

LEGISLATIVE COUNSEL'S DIGEST

SB 1831, Peace. Tobacco assets: sales.

(1) Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement, in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the Master Settlement Agreement between the state and counties and certain cities in the state.

Existing law sets forth the duties of the Infrastructure and Economic Development Bank and its board of directors generally in performing various financing transactions, including the issuance of bonds or the authorizing of the issuance of bonds by a trust, partnership, limited partnership, association, corporation, nonprofit corporation, or other entity, known as a special purpose trust.

This bill would authorize the bank to sell for, and on behalf of, the state all or any portion of the state's tobacco assets to a special purpose trust, which would be established as a not-for-profit corporation by the bill, except that the sale or sales would be limited to an amount necessary to provide the state with up to \$4.5 billion exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing the bill. "Tobacco assets" would be defined for these purposes as all moneys required to be paid to the state under the Master Settlement Agreement, as further provided in the memorandum of understanding and the California escrow agreement, and all of the state's rights to receive those payments.

This bill would provide that the 5 voting members of the State Public Works Board shall serve ex officio as the directors of the special purpose trust, and would authorize the special purpose trust



to issue bonds on the terms it determines. It would also authorize the special purpose trust to enter into agreements with any public or private entity and to pledge the tobacco assets that it purchased as collateral and security for the financing. It would specify that the bonds issued pursuant to these provisions shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state.

(2) Existing law establishes the Tobacco Settlement Fund and requires the state's share of moneys received pursuant to the Master Settlement Agreement to be deposited into the fund to be available, upon appropriation by the Legislature, for specified purposes.

This bill would except the sale of tobacco assets as provided for in the bill from these provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California economy is suffering the effects of the tragic events of September 11, 2001.

(b) Given the General Fund revenue shortfall, it is necessary to authorize the sale of tobacco assets in order to provide the state with up to \$4.5 billion in net proceeds.

SEC. 2. Article 7 (commencing with Section 63049) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 7. Tobacco Settlement State Securitization

63049. The definitions contained in this section are in addition to the definitions contained in Section 63010 and together with the definitions contained in that section shall govern the construction of this article, unless the context requires otherwise:

(a) "California escrow agreement" means the escrow agreement dated April 12, 2000, as amended, between the Attorney General, on behalf of the state, and the California escrow agent named in the agreement relating to the division between the state and the participating jurisdictions of amounts payable under the Master Settlement Agreement.



(b) “Consent decree and final judgment” means, collectively, the Consent Decree and Final Judgment entered in the Superior Court of the State of California for San Diego County on December 9, 1998, approving the Master Settlement Agreement, the memorandum of understanding, and the orders entered by the court on January 18, 2000, and July 30, 2001, approving the Agreement Regarding Interpretation of Memorandum of Understanding.

(c) “Master Settlement Agreement” means the settlement dated November 23, 1998, as amended, among the attorneys general of 46 states (including California), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and the other Subsequent Participating Manufacturers as defined therein.

(d) “Memorandum of understanding” means, collectively, the memorandum of understanding dated August 5, 1998, together with the Agreement Regarding Interpretation of Memorandum of Understanding, among the state and various local governments of the state to coordinate their pending cases and to allocate certain portions of the recovery under the Master Settlement Agreement.

(e) “Operating expenses” means the reasonable operating expenses of the special purpose trust, including, without limitation, the costs of preparation of accounting and other reports, maintenance of the ratings on the bonds, insurance premiums, or other required activities of the special purpose trust, and fees and expenses incurred for professional consultants and fiduciaries.

(f) “Tobacco assets” means all moneys required to be paid to the state under the Master Settlement Agreement, as further provided in the memorandum of understanding and the California escrow agreement, and all of the state’s rights to receive those payments.

63049.1. (a) Subject to subdivision (b), the bank is hereby authorized to sell for, and on behalf of, the state, solely as its agent, all or any portion of the tobacco assets to a special purpose trust which is hereby established as a not-for-profit corporation solely for that purpose and for the purposes necessarily incidental thereto, and to enter into one or more sales agreements with the



special purpose trust as and on the terms it deems appropriate, which may include covenants of, and binding on, the state necessary to establish and maintain the security of the bonds and exemption of interest on the bonds from federal income taxation. The principal office of the special purpose trust shall be located in Sacramento County. The articles of incorporation of the special purpose trust shall be prepared and filed, on behalf of the state, with the Secretary of State by the bank, and the five voting members of the State Public Works Board shall serve ex officio as the directors of the special purpose trust. Directors of the special purpose trust shall not be subject to personal liability for carrying out the powers and duties conferred by this article. The special purpose trust shall be treated as a separate legal entity with its separate corporate purpose as described in this article, and the assets, liabilities, and funds of the special purpose trust shall be neither consolidated nor commingled with those of the bank or the State Public Works Board.

The special purpose trust is hereby authorized to issue bonds, including, but not limited to, refunding bonds, on the terms it shall determine, and do all things contemplated by, and authorized by, this division with respect to the bank, and enjoy all rights, privileges, and immunities the bank enjoys pursuant to this division, or as authorized by Section 5140 of the Corporations Code with respect to public benefit nonprofit corporations, or as necessary or appropriate in connection with the issuance of bonds, and may enter into agreements with any public or private entity and pledge the tobacco assets that it purchased as collateral and security for its bonds. The pledge of any of these assets and of any revenues, reserves, and earnings pledged in connection therewith shall be valid and binding in accordance with its terms from the time the pledge is made and amounts so pledged and thereafter received shall immediately be subject to the lien of the pledge without the need for physical delivery, recordation, filing, or other further act. The special purpose trust, and its assets and income, and bonds issued by the special purpose trust, and their transfer and the income therefrom, shall be exempt from all taxation by the state and by its political subdivisions.

(b) Based upon the terms of the sale agreements and bonds as established by the special purpose trust pursuant to subdivision (a), tobacco assets may be sold pursuant to this article, whether at one



time or from time-to-time, only in an amount or amounts necessary to provide the state with up to four billion five hundred million dollars (\$4,500,000,000) exclusive of capitalized interest on the bonds and any costs incurred by the bank or the special purpose trust in implementing this article, including, but not limited to, the cost of financing one or more reserve funds, any credit enhancements, costs incurred in the issuance of bonds, and operating expenses. The net proceeds of sale of any tobacco assets by the bank shall be deposited in the General Fund. The use and application of the proceeds of any sale of tobacco assets or bonds shall not in any way affect the legality or validity of that sale or those bonds.

63049.2. Notwithstanding any other provision of this division, Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043) do not apply to any bonds issued by the special purpose trust established by this article. All matters authorized in this article are in addition to powers granted to the bank in this division.

63049.3. Any sale of some or all of the tobacco assets under this article shall be treated as a true sale and absolute transfer of the property so transferred to the special purpose trust and not as a pledge or grant of a security interest by the state, the bank board, the State Public Works Board, or the bank for any borrowing. The characterization of the sale of any of those assets as an absolute transfer by the participants shall not be negated or adversely affected by the fact that only a portion of the tobacco assets is transferred, nor by the state's acquisition of an ownership interest in any residual interest or a subordinate interest in the tobacco assets, nor by any characterization of the special purpose trust or its bonds for purposes of accounting, taxation, or securities regulation, nor by any other factor whatsoever.

63049.4. (a) On and after the effective date of each sale of tobacco assets, the state shall have no right, title, or interest in or to the tobacco assets sold, and the tobacco assets so sold shall be property of the special purpose trust and not of the state, the bank board, the State Public Works Board, or the bank, and shall be owned, received, held, and disbursed by the special purpose trust or the trustee for the financing. None of the tobacco assets sold by the state pursuant to this article shall be subject to garnishment,



levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the state, the bank board, the State Public Works Board, or the bank.

On or before the effective date of any sale, the state, acting through its Attorney General, upon direction of the bank, shall notify the California escrow agent under the Master Settlement Agreement and the California escrow agreement that the sold tobacco assets have been sold to the special purpose trust and irrevocably instruct the California escrow agent that, as of the applicable effective date, the tobacco assets sold are to be paid directly to the trustee for the applicable bonds of the special purpose trust. The state pledges to and agrees with the holders of any bonds issued by the special purpose trust that it will not amend the Master Settlement Agreement, the memorandum of understanding, or the California escrow agreement, or take any other action, in any way that would alter, limit, or impair the rights to receive tobacco assets sold to the special purpose trust pursuant to this article, nor in any way impair the rights and remedies of bondholders or the security for their bonds until those bonds, together with the interest thereon and costs and expenses in connection with any action or proceeding on behalf of the bondholders, are fully paid and discharged. The state further pledges and agrees that it shall enforce its rights to collect all moneys due from the participating tobacco products manufacturers under the Master Settlement Agreement and, in addition, shall diligently enforce the model statute as contemplated in the Master Settlement Agreement (Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code) against all tobacco product manufacturers selling tobacco products in the state and that are not signatories to the Master Settlement Agreement, in each case in the manner and to the extent necessary in the judgment of the Attorney General to collect all moneys to which the state is entitled under the Master Settlement Agreement. The special purpose trust may include these pledges and undertakings in its bonds. Notwithstanding these pledges and undertaking by the state, the Attorney General may in his or her discretion enforce any



and all provisions of the Master Settlement Agreement, without limitation.

(b) Bonds issued pursuant to this article shall not be deemed to constitute a debt of the state or a pledge of the faith or credit of the state, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the state or of any political subdivision thereof, other than the special purpose trust, is or shall be pledged to the payment of the principal of or the interest on the bonds.

(c) Whether or not the bonds are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

(d) The special purpose trust and the bank shall be treated as public agencies for purposes of Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, and any action or proceeding challenging the validity of any matter authorized by this article shall be brought in accordance with, and within the time specified in, that chapter.

63049.5. The state acknowledges and agrees that its 57 counties, the Cities of San Jose, Los Angeles, and San Diego, and the City and County of San Francisco, commonly and collectively known as the “participating jurisdictions,” have rights and interests in the memorandum of understanding. In recognition of the rights of the participating jurisdictions of the state contained in the memorandum of understanding, the state pledges that the sale of tobacco assets authorized by this article shall in no way include and the state shall not otherwise alter, limit, or impair the rights of the participating jurisdictions, including, but not limited to, rights to receive payments, set forth in the memorandum of understanding. Nothing in this article shall be construed to alter the right of each of the participating jurisdictions to sell or assign some or all of its interest, and rights to receive payments, under the memorandum of understanding in the manner deemed appropriate by its governing body.

SEC. 3. Section 104897 of the Health and Safety Code is amended to read:



104897. (a) There is hereby established in the State Treasury the Tobacco Settlement Fund.

(b) In the 2001–02 fiscal year, four hundred one million nine hundred ninety-two thousand dollars (\$401,992,000) of the state’s share of funds received pursuant to the Master Settlement Agreement shall be deposited in the fund.

(c) Except as provided in Article 7 (commencing with Section 63049) of Chapter 2 of Division 1 of Title 6.7 of the Government Code, commencing July 1, 2002, the total amount of the state’s share of moneys received pursuant to the Master Settlement Agreement shall be deposited in the fund.



Approved _____, 2002

Governor

